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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUBCOMMITTEE

Thirtieth session

SUMMARY RECORD OF THE 544th MEETING

Held at Headquarters, New York,
on Tuesday, 2 April 1991, at 10.30 a.m.

Chairman: Mr. MIKULKA (Czechoslovakia)

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The meeting was called to order at 10.40 a.m.

PARTICIPATION OF NON-MEMBER STATES IN THE WORK OF THE SUBCOMMITTEE

1. The CHAIRMAN informed the members that he had received a communication from Yemen stating that Yemen wished to participate in the work of the Subcommittee. Inasmuch as the granting of observer status was a prerogative of the parent committee, the Subcommittee did not need to take any formal decision on the matter. However, he suggested that, in accordance with the practice followed in recent years, the representative of Yemen should be authorized to attend the formal meetings of the Subcommittee and, if he wished to make a statement, to request the floor. If he heard no objection, he would take it that the Subcommittee agreed to the request.

2. It was so decided.

CONSIDERATION OF THE LEGAL ASPECTS RELATED TO THE APPLICATION OF THE PRINCIPLE THAT THE EXPLORATION AND UTILIZATION OF OUTER SPACE SHOULD BE CARRIED OUT FOR THE BENEFIT AND IN THE INTERESTS OF ALL STATES, TAKING INTO PARTICULAR ACCOUNT THE NEEDS OF DEVELOPING COUNTRIES (continued)

3. Mr. KHABIROV (Union of Soviet Socialist Republics) welcomed the establishment of a new Working Group on agenda item 5 and expressed the hope that it would help the Subcommittee to consider the issue as thoroughly as possible. Work in that area should be directed towards strengthening the legal basis for international cooperation in space. His delegation believed that the vast majority of the members of the Subcommittee shared that viewpoint, and the debates of the preceding session had confirmed that opinion. The views expressed had certainly been varied, and a broad range of approaches to the issue had been taken, but the general tone of the discussion had been quite clear: new ways of developing international cooperation in space must be sought, and the legal regime for that cooperation must be refined. That exchange of views and ideas gave him reason to hope that the Subcommittee was about to embark on a constructive process that would lead to the resolution of the concrete problems posed by the definition of norms and their codification.

4. With respect to the substance of the work of the current session, it evidently must be recognized that by its very nature, the Legal Subcommittee was called upon to resolve problems of a legal character. Of course, the law-making process was not isolated from the concrete realities of politics and economics. However, precisely in the interest of developing international cooperation in the peaceful uses of outer space, and given the need to regulate such cooperation by means of legal principles, his delegation thought that the Subcommittee should concentrate primarily on the legal content of its agenda.

(Mr. Khabirov, USSR)

5. In that context, he pointed out that the principle mentioned in the title of the agenda item was directly linked to the principle of cooperation and mutual assistance laid down in article IX of the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. It was therefore important to concentrate on the definition and refinement of the aspects relating to international law and also the organizational and technical aspects of international cooperation in outer space. Only then could the Legal Subcommittee's work in that important area proceed along practical lines. The Soviet Union believed that the forthcoming debates of the Subcommittee and of its Working Group would be useful and constructive and that they would lead to a better understanding of the problems currently before those bodies in the area of cooperation, as well as of the political means and the methods available under international law to solve them. In that regard, the Subcommittee should analyse and interpret all aspects of issues concerning broader participation in space activities by all interested States, especially developing States, and the introduction and development of bilateral and multilateral cooperation in the area of space exploration and utilization.

6. With respect to the concrete proposals put forth at the preceding session by a number of delegations contained in the Working Group's report to the Subcommittee, his delegation wished to point out that it had transmitted the proposals to the appropriate Soviet institutes and agencies. To supplement the information communicated regularly to the United Nations regarding the areas of space exploration and utilization in which international cooperation could be expanded, his delegation thought it would be useful to outline for the participants at the current session a number of new ideas and proposals, which were still provisional, put forth by Soviet institutes and agencies having competence in the matter; it intended to do so at a later stage, within the Working Group.

7. The Soviet Union hoped that mutually beneficial relations of cooperation in the area of outer space would develop as quickly as possible and that States would unite their efforts in the exploration and peaceful uses of outer space, for the benefit and in the interests of all States. To that end, the Soviet Union had signed three new bilateral intergovernmental agreements since the preceding session, bringing the number of such agreements to which it was a party to about a dozen. The conclusion of agreements of that type between Governments provided for a higher level of cooperation in space activities and a solid foundation in international law for the establishment and development of cooperation in the peaceful conquest of space. As Australia, Brazil and some other countries had stated in the Working Group, such agreements could also be of interest to the Working Group in its efforts concerning the new agenda item.

8. Mr. SCHÄFER (Germany) recalled that after the introduction of agenda item 5 in 1988, the Subcommittee had decided by consensus that consideration of the item should involve four steps. Following the consideration of

(Mr. Schäfer, Germany)

national legal frameworks (first step) and of relevant international agreements (second step), the information thus obtained would be reviewed by a Working Group; that Group had been established at the start of the current session and would continue its considerations until the Subcommittee concluded that the substantive deliberations had produced a satisfactory result.

9. Germany had participated in the first and second steps by submitting a report on the current status of its domestic space law and on its cooperation activities. It had also presented a compilation of national and international space law which emphasized the particular importance Germany attached to the work of the Subcommittee in that respect.

10. The basis for all outer space activities, particularly with regard to international cooperation, was laid down in the 1967 Outer Space Treaty. Germany was a party to that Treaty, as well as to the Convention on International Liability for Damage Caused by Space Objects, the Convention on Registration of Objects Launched into Outer Space and the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space. It also considered that the Principles Relating to Remote Sensing of the Earth from Outer Space accurately reflected the current status of international law in that respect.

11. Germany particularly relied on the aforementioned multilateral agreements in the regulation of its national space activities, which were mainly governmental activities. The administration of space activities in Germany had been fundamentally restructured in 1989, when the German Space Agency (DARA) had been established as the central agency with management responsibilities for national space activities. To date, no space activities had been undertaken by private entities. In consequence, there was currently little need for Germany to add to its national space law.

12. Germany had always been eager to participate in international cooperation in space by means of specific arrangements. Thus, it participated in European cooperation in space through the European Space Agency (ESA). One of the highlights of that participation undoubtedly had been the signing of the space station agreement concluded among the member States of ESA, Canada, Japan and the United States.

13. In addition, Germany had a long tradition of cooperation with developing countries on the basis of bilateral agreements. For example, it had concluded agreements with Argentina and Brazil on cooperation in scientific research and technological development. Several projects were currently under way in the context of those agreements, including remote-sensing projects on cloud observation, climate change and the design of a multispectral scanner.

14. Moreover, an agreement on scientific and technical cooperation had been concluded in 1979 with the People's Republic of China, and a special agreement

(Mr. Schäfer, Germany)

on civil space research between the German Aerospace Research Establishment and the Chinese Academy for Space Technology had been signed in November 1984. Six of the projects which had been undertaken in pursuance of that agreement since 1988, concerning structural mechanics, remote sensing and space flight dynamics, had already been completed.

15. Germany had also concluded two general agreements with India, one on cooperation in the peaceful uses of nuclear energy and space research and the other on scientific research and technological development. A special agreement between the Indian Space Research Organization and the German Aerospace Research Establishment on cooperation in space research and technology, concluded on 12 August 1974, constituted a framework for further bilateral cooperation between the two countries. Two noteworthy projects carried out under those agreements had concerned, respectively, a monocular electronic-optical stereo scanner (MEOSS) and an airborne 90-GHz radiometer (ABREX).

16. Two agreements concluded with Indonesia deserved particular attention: the framework agreement of March 1979 between Germany and the Republic of Indonesia on cooperation in scientific research and technological development, and the special agreement of April 1980 between the Indonesian National Institute of Aeronautics and Space and the German Aerospace Research Establishment on cooperation in the fields of satellite communication, remote sensing and wind energy.

17. Thus, Germany had a long-standing and fruitful tradition of bilateral cooperation with developing countries. The bilateral cooperation agreements to which he had referred bore witness to Germany's implementation of the principle of cooperation laid down in the 1967 Outer Space Treaty. The reunified Germany would continue that tradition.

18. Mr. SOETJIPTO (Indonesia) said that as the Committee on the Peaceful Uses of Outer Space was a unique multilateral forum entrusted with the weighty mandate of preserving outer space for peaceful activities for the benefit of mankind, the Legal Subcommittee should continue to build upon previous accomplishments to give greater clarity and substance to the legal aspects of the concept of international cooperation in outer space for the benefit of all countries, in particular the developing countries.

19. It should be recalled that the agenda item had first been proposed by the Group of 77 during the Subcommittee's twenty-fifth session. Indonesia, as a developing country with an advanced space programme, had supported the proposal because it was both timely and relevant to the needs and interests of developing countries. That was particularly apparent in light of the pressing need for those nations to enhance their capabilities to establish their own space programmes in accordance with their respective national goals. In that respect, Indonesia believed that the drafting of a legal instrument concerning international cooperation should guarantee greater access to the scientific

(Mr. Soetjipto, Indonesia)

and technical benefits of space activities. That approach alone would ensure equity in the availability of information and knowledge, as well as equitable access to technical assistance, whereby the application of space science and space-related activities would play an essential role in facilitating global development, especially in the developing countries.

20. Thus, the establishment of such a legal framework would serve to close the gap between existing space law and technological developments. The Working Group could make significant contributions in that effort, in order to assure greater equity, harmonization and equality among States.

21. Mr. MEHRA (India) said that agenda item 5 was of particular significance and practical value to developing countries and that the Subcommittee should give it priority. His delegation therefore welcomed the establishment of a Working Group on the item, which would provide an opportunity for constructive debate and would play a valuable role in the realization of the objectives under the item.

22. In recent years, the utilization of space and the application of space science and technology to various spheres, including communications, meteorology and remote sensing, had progressed beyond all expectations, creating new prospects for the development of humankind in general. Those applications were of particular benefit to developing countries, but unfortunately, since the adoption of the 1967 Outer Space Treaty, under which outer space was to be used for peaceful purposes and in the interests of all States, only a handful of developed States had reaped the benefits of space activities. A chasm had therefore appeared between the developed and the developing countries in what should have been an endeavour undertaken for the common good. Developing countries seeking to enhance their capabilities in outer space and to apply them to their peaceful development needs continued to encounter such obstacles as the lack of training facilities and restrictions on the exchange of technical information and the supply of equipment and components, even for peaceful applications.

23. There was a need, therefore, to identify why the principle had not been applied, to examine ways and means of correcting that inequality and gradually to perfect mechanisms to promote greater international cooperation. One possible approach to the problem was a critical analysis of relevant national laws, of the conventions in force and of bilateral and multilateral agreements. That would facilitate the identification of areas in which such instruments had promoted common objectives, those in which improvements were necessary and those in which various obstacles hindered the implementation of article I of the 1967 Outer Space Treaty. Such an analysis would enable the Legal Subcommittee to consider and develop the legal machinery and instruments required to translate that principle into practical terms, taking into account the needs of developing countries.

(Mr. Mehra, India)

24. Agenda item 5 dealt with an issue of great practical significance. In considering the item, the members of the Subcommittee should adopt a constructive approach and should resolve any problems that might arise in a spirit of compromise. The developed and the developing countries should unite their efforts to ensure that outer space would be explored and utilized in the interest of all mankind and to strengthen internatioanl peace and security. Genuine international cooperation would provide the normative core around which the objectives of the agenda item must be developed and could be realized.

25. Mr. YOUNG (United Kingdom) said that his country continued to be an active participant in the multilateral legislative process for outer space activities. The United Kingdom had ratified the 1967 Outer Space Treaty, the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, the Convention on International Liability for Damage Caused by Space Objects, and the International Convention on Registration of Objects Launched into Outer Space. In addition, the United Kingdom had a vital programme of cooperative activities conducted on both multilateral and bilateral bases, with, for instance, India, China and the Soviet Union. Furthermore, its Overseas Development Agency administered government-funded aid projects in developing countries around the world. A significant number of those projects involved the utilization of British space technology and expertise, through contracts engaging British firms to perform such work in the recipient developing countries. That was a concrete expression of the United Kingdom's undertakings under article 1 (1) of the 1967 Outer Space Treaty. In addition, the Committee for Earth Observation Satellites, of which the United Kingdom was a member, was currently developing a policy for distributing satellite data on the global environment to developing countries. In view of the foregoing, his delegation saw no need at the moment to legislate for activities which were already occurring widely in a voluntary manner.

26. Turning to the organization of the Legal Subcommittee's work, he welcomed the measures adopted at its twenty-ninth session to improve its utilization of conference services and the efficiency of its work. On that point, his delegation had long been of the view that the session of the Subcommittee could be reduced from three weeks to two without an adverse effect on consideration of all the items on its agenda. It also saw no discernible benefit in alternating the meetings of the Subcommittee between New York and Geneva; that was actually an exception to the General Assembly principle that United Nations bodies should meet at their headquarters, it deprived the Subcommittee of all the back-up services and resources in New York, and it complicated attendance at Subcommittee meetings by representatives of the permanent missions established in New York. Given the relatively light agenda in recent years, it was difficult to justify on any objective basis a session that was a week longer than that of either the Scientific and Technical Subcommittee or the plenary Committee itself. Furthermore, the current practice of spending equal time on agenda items regardless of their content or the likelihood of consensus was questionable.

(Mr. Young, United Kingdom)

27. His delegation also questioned whether it was still appropriate for the Legal Subcommittee to continue to enjoy the benefit of summary records - which cost approximately $670 a page - when other committees, such as the Scientific and Technical Subcommittee - did not enjoy such benefits. Such other committees seemed to function very well with only a report, and his delegation could not see that the work of the Legal Subcommittee was qualitatively so different from that of the others to justify the special treatment.

28. Mr. KHABIROV (Union of Soviet Socialist Republics) thanked the German delegation for the information it had given and especially for the list of instruments and agreements concluded between Germany and other countries in the area under consideration. To complete that list, his delegation wished to inform the Subcommittee that in October 1988, the USSR Academy of Sciences and the German Ministry of Research and Technology had concluded an Agreement on scientific and technical cooperation in the exploration and peaceful uses of outer space. Under the terms of that Agreement, the Parties undertook to cooperate in the field on the basis of reciprocity and equality. The cooperation would centre particularly on manned and unmanned flights and on various activities such as space biology and medicine, astronomy, astrophysics, or the study of microgravity. Arrangements for an initial cooperation programme had been concluded pursuant to the Agreement.

29. On the question of the Legal Subcommittee's methods of work just raised by the representative of the United Kingdom, he did not believe that it was relevant to the agenda item under consideration. He wished none the less to emphasize that the Soviet Union was opposed to reducing the length of the Legal Subcommittee's session. Such a reduction would affect the substance of the Subcommittee's work, cause the legislative process to regress, and slow down the progressive development of international space law. His delegation could not endorse such an approach, and it believed, furthermore, that the principle of alternating the Subcommittee's sessions between Geneva and New York should be maintained. As for the summary records, it recalled that the Subcommittee was a legal body and as such could not be put on the same plane as the Scientific and Technical Subcommittee. All jurists knew how important travaux préparatoires were. His delegation thought the summary records belonged to that category of documents, and that the Legal Subcommittee could therefore not do without them. It reserved the right to make a more in-depth statement on the matter at a later time.

30. His delegation had listened with interest to the statement of the representative of the International Astronautical Federation, who had informed the Subcommittee that establishments in three countries, Germany, the United States and the Soviet Union, had drawn up a draft convention on manned flights. He would like the representative of the International Astronautical Federation to provide some elucidation of the main provisions of that text.

31. Mr. BOYER (France), speaking in exercise of the right of reply, said that, while the Subcommittee's methods of work could certainly be improved, the manner suggested by the United Kingdom representative was perhaps not the best. Reiterating the comments he had made on the matter the previous year in response to a similar proposal by the United States delegation, he observed that both the United States delegation the year before and the United Kingdom delegation now had referred to a recommendation on the need to coordinate and rationalize the work of the Subcommittee. It should be remembered that the same recommendation stipulateld that in doing so account should be taken of the decision that Geneva and New York must alternate as the venue for meetings of the Legal Subcommittee.

32. Furthermore, the United Kingdom representative had spoken of savings but had not provided any figures. Lastly, to repeat what the Soviet representative had just said, it was a question not of the Scientific and Technical Subcommittee but of the Legal Subcommittee, and the latter could have reasons, and good ones, for meeting in Geneva. It should be recalled that both the United Nations Office at Geneva and the permanent missions of all countries were established in Geneva, and he saw no reason, in view of the pertinent texts on the matter, to discontinue the practice of alternating sessions between Geneva and New York.

33. Mr. ZAWELS (Argentina), speaking in exercise of the right of reply, referred to the remarks of the United Kingdom representative on the Subcommittee's organization of work and its under-utilization of the time and resources allotted to it. It would be interesting to ask the Secretariat to provide statistics on the utilization of resources and also to ask what had been the United Kingdom representative's criteria in affirming that the Subcommittee had not used its time effectively. That was not at all the impression he himself had had.

34. Regarding the substantive question, the effectiveness of the Subcommittee's work could not be judged solely on the basis of statistics, but by taking account of the objectives and legal results of its work. The Legal Subcommittee was working on drafting legal provisions governing space activities, and the time it devoted to them should therefore correspond to the importance of the questions it was considering.

35. Mr. MOTSYK (Ukrainian Soviet Socialist Republic), speaking in exercise of the right of reply, said that he did not share the view that the Subcommittee's session should be reduced to two weeks. At least three weeks were needed to achieve results on the legal basis for international cooperation on space activities. Furthermore, he thought it was extremely important to have summary records, because they were essential to the accomplishment of the Subcommittee's tasks.

36. Ms. SIEGEL (United States of America), speaking in exercise of the right of reply, said that she agreed with the United Kingdom delegation that less time should be allotted for the session of the Subcommittee and strongly supported the proposal to hold the meetings of the Subcommittee solely in New York, for reasons of economy, efficiency and communication.

37. Mr. HIENSCH (Netherlands), speaking in exercise of the right of reply, wished to state officially his support for the statement of the United Kingdom delegation. He too favoured shortening the session of the Subcommittee to two weeks.

38. Mr. GONZALEZ (Chile), speaking in exercise of the right of reply, was surprised that some delegations were speaking of restructuring and shortening the Subcommittee's meeting time when the Subcommittee was meant to be considering agenda item 5. He did not see why the Scientific and Technical Subcommittee should take time from work to view audio-visual presentations and to engage in discussion even as it claimed to be reducing the time that would be spent on the matter by the Legal Subcommittee, which was working on substantive questions so as to lay the groundwork for international cooperation in the new field of outer space, where it was essential for all countries to have access to the latest technology. The task was a difficult one and required serious effort, and great care must be taken with the substantive questions.

39. Some had said that the length of the session should be cut, but without giving good reasons. By so doing, the Subcommittee would be in danger of giving the false impression that it had not sufficient legal matters for study, whereas putting in place a legal framework for space activity was of fundamental importance. He insisted therefore that the Subcommittee should meet for at least three weeks as it would otherwise not be able to deal effectively and usefully with the task at hand.

40. Mr. ALZATE (Colombia), speaking in exercise of the right of reply, endorsed the statements of the representatives of Chile and Argentina. In gauging the progress accomplished by the Subcommittee, it was necessary to consider quality and not just quantity. His delegation was in favour of keeping the length of the session at three weeks. Moreover, it would be useful to schedule the meetings in such a way that the Subcommittee would not be meeting at the same time as other bodies studying similar questions, for instance the law of the sea, as that would make it difficult for some delegations to participate. The alternation between Geneva and New York was an established practice that should be maintained.

41. Mr. DA COSTA E SILVA NETO (Brazil), speaking in exercise of the right of reply, supported the statement of the Chilean representative, for any judgement of the effectiveness of the Subcommittee's work could not be based on procedure but rather on the discussion of the substantive issues. He also wished to put on record his support for the retention of summary records so that delegations' views on the questions examined in Subcommittee would be duly noted.

42. Mr. OBAKPOLOR (Nigeria), speaking in exercise of the right of reply, agreed with the delegations that had spoken against shortening the Subcommittee's session, since it must reach practical solutions to the important and delicate problems it was dealing with, and so needed the three weeks.

43. Mr. BASAVE (Mexico) asked the Chairman to invite members of the Subcommittee to confine their remarks to the item under study, namely, item 5, since, however interesting it might have been, the discussion that had just taken place had been beside the point.

44. The CHAIRMAN explained to the representative of Mexico that the delegations that had spoken after the United Kingdom representative had done so in exercise of the right of reply.

45. Mr. SCHAFER (Germany), referring to the list of parties to the multilateral intergovernmental agreements distributed that day by the Secretariat at the request of the United States delegation, was glad the list had been drawn up and thought it worthwhile, but felt obliged to point out that it was not up to date, particularly with respect to the participation of Germany. The list was therefore an unofficial one only, without any legal standing whatever.

46. Mr. GOROVE (International Astronautical Federation), recalled that he had mentioned the previous day in passing the draft Convention on Manned Space Flight and said that he would go over its main points in response to a request from the representative of the Soviet Union.

47. The draft Convention resulted from a cooperative effort by three institutions, in Germany, the Soviet Union and the United States, and it had been early decided that, instead of drafting a purely academic instrument, an attempt would be made to draft a text that would not only deal with some of the major issues needing clarification, but also take into account practical feasibility, even if that meant concessions by the cooperating institutions on certain issues. As previously indicated, the present text, which was the seventh draft, contained several provisions that represented a compromise among the different points of view, but that was normal in any international drafting. By the same token, it could be expected that reactions after the presentation of the draft Convention would be mixed. The drafters' primary objective was to initiate and promote international discussions in appropriate forums in the hope that eventually they would lead to negotiations between interested States, either in the United Nations Committee on the Peaceful Uses of Outer Space or elsewhere.

48. More generally, the present text of the draft Convention contained a number of pertinent provisions, but the legal regime applicable to manned space flight remained relatively uncertain on a few points.

(Mr. Gorove)

49. The main provisions of the draft were the following. In article I, Definitions, a few new and useful ideas were reflected in the definitions of "manned space object", "manned space flight", "international manned space flight", and even "crew".

50. Article II, Registration, was relatively faithful to the provisions of the Convention on Registration of Objects Launched into Outer Space. Article III, Jurisdiction and control, was fairly closely modelled on the 1967 Outer Space Treaty. Article VII, Responsiblity and liability, took its inspiration both from the provisions of the Outer Space Treaty and those of the Convention on International Liability for Damage Caused by Space Objects.

51. Article VIII, Intellectual property, took its definitions from the Convention establishing the World Intellectual Property Organization. Article V, which was about ensuring safety, dealt also with the efforts being made to avoid harmful space debris, pollution, contamination and harmful changes in the environment of the Earth, and with the feasibility of appropriate measures. The information gathered would be made available to the Secretary-General.

52. With respect to mutual assistance in space, article VI of the draft Convention went a little farther than the Outer Space Treaty and the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space. Article IV, Rights and obligations of persons on manned space flight, set out the chain of command for activities aboard manned spacecraft.

53. Article IX, Consultation and settlement of disputes, referred to an arbitral tribunal, to be appointed in the same manner as was provided for the Claims Commission in articles XV to XVII of the Convention on International Liability for Damage caused by Space Objects.

54. Article X, Application to international organizations, contained the provisions usually found in the principal treaties on outer space. Article XI, Concluding provisions, was as yet unfinished.

55. In short, everything possible had been done to harmonize the draft Convention with existing international space law as represented by the principal space agreements, but with a few new provisions. He hoped that the text would give rise to an international debate, and that the Legal Subcommittee would itself wish to examine it a little more closely.

The meeting rose at 11.55 a.m.